WISCONSIN SUPREME COURT CALENDAR
AND CASE SYNOPSES
February 2004

This calendar contains summaries of upcoming Supreme Court cases. These brief synopses do not cover all issues that each case presents. These cases originated in the following counties:

Dane
Milwaukee
Oneida
Outagamie
Racine
Trempealeau
Vilas
Walworth
Waupaca

These cases will be heard in the Wisconsin Supreme Court Hearing Room, 231 East Capitol:

TUESDAY, FEBRUARY 10, 2004

9:45 a.m.	00-1426-D	In the Matter of Disciplinary Proceedings Against John Miller Carroll: OLR v. John Miller Carroll
10:45 a.m.	02-2642-W	State ex rel. Shannon Labine v. Stephen Puckett

WEDNESDAY, FEBRUARY 11, 2004

9:45 a.m.	02-2433-CR	State v. Kevin Harris
10:45 a.m.	02-2897-CR & 02-2898-CR	State v. Robert C. Deilke
1:30 p.m.	02-1203-CR	State v. Derryle S. McDowell

THURSDAY, FEBRUARY 12, 2004

9:45 a.m.	02-1249	St. Paul Fire & Marine Ins. v. Curtis J. Keltgen, et al.
10:45 a.m.	02-3293	GPS, Inc. v. Town of St. Germain
1:30 p.m.	02-3353-FT	State Farm Mutual Auto. Ins. Co. v. Nancy G. Langridge

THURSDAY, FEBRUARY 19, 2004

9:45 a.m.	03-0534 – 03-0553	Village of Trempealeau v. Mike R. Mikrut
10:45 a.m.	02-2322-FT	State, et al. v. City of Rhinelander, et al.
1:30 p.m.	02-2035	Beloit Liquidating Trust v. Jeffrey T. Grade, et al.

The Supreme Court calendar may change between the time you receive this synopsis and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-277-5133. Synopses are a service of the Director of State Courts Office/Amanda Todd, Court Information Officer 608-264-6256.

WISCONSIN SUPREME COURT
TUESDAY, FEBRUARY 10, 2004
9:45 a.m.

00-1426-D In the Matter of Disciplinary Proceedings Against John Miller Carroll: OLR v. John Miller Carroll

This is a petition for reinstatement to the practice of law. The petitioner practiced law in New London, which is located in both Outagamie and Waupaca counties.

In this case, the Wisconsin Supreme Court will decide whether to reinstate the law license of John Miller Carroll.

Here is the background: The Supreme Court, which supervises the practice of law in Wisconsin, issued an order in December 2001 suspending Carroll's license for one year beginning Jan. 10, 2002. At the time, he was practicing in the Racine County community of Wind Lake. Carroll became a lawyer in December 1987. During his career, he has been disciplined repeatedly:

- 1992: private reprimand for allegedly mishandling money that belonged to his law firm.
- 1997: private reprimand for allegedly doing work for a client after his services had been terminated and lying about having filed court papers for the client.
- 1999: public reprimand for allegedly neglecting a case, not communicating with the client, and failing to return retainer money.
- 2002: one-year suspension for eight counts of professional misconduct.[1] Four of these counts were related to the handling of his clients' money, and four involved failure to diligently pursue a client's claim and keep the client informed about the status of the case.

The one-year suspension that the Court imposed in 2002 was double what the referee in that case had recommended (referees are lawyers and reserve judges who are appointed by the Supreme Court to hear these cases and make recommendations on discipline to the Court). In arriving at its decision, the Court weighed the factors it must consider in disciplinary matters.[2] The Court characterized Carroll's misconduct as "serious and extensive" and noting that it "demonstrated a pattern of deception and misdealing with clients that runs to the very heart of the integrity of the attorney-client relationship."

Now that the year is over, Carroll must demonstrate that he is suitable for reinstatement as a lawyer. He must show that he has the moral character to practice law in Wisconsin, that his reinstatement will not be harmful to the public or the justice system, and that he has complied with the Court's requirements.

Carroll argues that he has met this burden, but the referee has recommended against reinstatement, finding that his behavior during the suspension has shown that he has not made progress. For example, Carroll allegedly held open a trust account that he was ordered to close as part of shutting down his law practice, holding onto $20,000 of his clients' money, and continued to use the title "attorney" during his suspension.

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[1] BAPR v. John Miller Carroll, 2001 WI 130

[2] These factors include: the seriousness, nature and extent of the misconduct; the level of discipline needed to protect the public, the courts, and the legal system from repetition of the attorney's misconduct; the need to impress upon the attorney the seriousness of the misconduct; and the need to deter other attorneys from committing similar misconduct.

The Court will decide whether Carroll will be allowed to practice law in Wisconsin.

WISCONSIN SUPREME COURT
TUESDAY, FEBRUARY 10, 2004
10:45 a.m.

02-2642-W State ex rel. Shannon Labine v. Stephen Puckett

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a ruling of the Dane County Circuit Court, Judge Daniel R. Moeser presiding.

In this case, the Wisconsin Supreme Court will decide whether a Wisconsin prisoner who is incarcerated in an out-of-state facility may be disciplined for prison misconduct under that state's rules.

Here is the background: In July 1993, Shannon Labine was convicted in Sheboygan County Circuit Court of first-degree intentional homicide and sentenced to life in prison. He was sent to a private prison, the Prairie Correctional Facility in Minnesota. While there, he broke prison rules and was disciplined. This discipline record affects his privileges, work assignments, chances for transfer to a lower-security facility, chances for parole, and more.

Labine filed a petition with the Wisconsin Department of Corrections (DOC) seeking transfer to a lower security prison and he was turned down based in part upon the Minnesota conduct reports. He then petitioned the Dane County Circuit Court for a writ of certiorari[3] arguing that the Minnesota facility did not have the authority to discipline a Wisconsin prisoner and that the Wisconsin Department of Corrections could not consider his Minnesota record in ruling on his request for a security upgrade. The circuit court dismissed the case without analyzing these arguments because Labine had not paid the filing fees.

Labine appealed, and the Court of Appeals found that Labine did not have a viable claim. The Court of Appeals noted that Wisconsin Administrative Code § DOC 302.07 provides that, in setting a prisoner's security classification, the DOC may consider, among other things, "the inmate's record of adjustment and misconduct." The Court of Appeals found that this phrase covers offenses committed at in-state and out-of-state prisons.

In his filings with the Supreme Court, Labine argues that the Minnesota prison never was given authority to discipline Wisconsin inmates and that, because the prison's conduct code was not created according to the requirements of Wisconsin law, it cannot be used by the Wisconsin DOC to reject his request for a security upgrade and transfer.

The Supreme Court will determine whether Wisconsin inmates who are housed out-of-state are subject to the host states' prison discipline systems.

[3] A court issues a writ of *certiorari* in order to inspect the proceedings that have occurred in a lower court to determine if there are mistakes.

WISCONSIN SUPREME COURT
WEDNESDAY, FEBRUARY 11, 2004
9:45 a.m.

02-2433-CR State v. Kevin Harris

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed an order of the Walworth County Circuit Court, Judge James L. Carlson presiding.

In this case, the Wisconsin Supreme Court will clarify what information the prosecution must share with the defense in a criminal matter. The law requires the State to turn over exculpatory evidence – that is, evidence that might weigh in the defendant's favor – but this case looks at the scope of the prosecutor's duty to share other evidence with the defense.

Here is the background: On April 24, 2001, Kevin Harris – a mentally ill individual with a ninth-grade education – was charged with sexually assaulting a six-year-old girl. According to the criminal complaint, the girl, B.M.M., was looking for a friend in her neighborhood when Harris invited her into his apartment and asked her if she wanted to learn what boyfriends do. He then kissed her and touched her inappropriately. She began crying and got out of the apartment and went home. When police contacted Harris, he initially denied that the child had been in his apartment but later changed his story and admitted she was there, but said he had touched only her leg and head.

About a month after he was charged, Harris filed a demand for discovery, requesting that the State turn over all exculpatory evidence, including evidence that would lead to further investigation.
He also entered and changed pleas several times, switching from 'not guilty' to 'not guilty by reason of mental disease or defect (NGI)' to 'guilty'. He entered the guilty plea on July 25, 2001 as part of a plea agreement. He was sentenced to 30 years' confinement followed 15 years of extended supervision.

Shortly after the sentencing, Assistant District Atty. Maureen Boyle, who had prosecuted the case, informed Harris' attorney that, in June 2001, B.M.M. had accused her grandfather of sexually assaulting her. Harris then filed a motion to withdraw his guilty plea and the court conducted a hearing at which the following exchange took place:

Judge Carlson:	There was a request for discovery and you didn't turn it over.
DA Boyle:	No, I didn't. I did not turn it over at that time.
Judge:	With a discovery demand out there.
DA:	I didn't see – don't see how evidence that would not be admissible at trial is exculpatory.
Judge:	But don't you think that that's kind of presumptuous to say that this is not going to be admitted into evidence? [To say] "I'm going to make the decision here. I'm the judge. I'm the Court of Appeals. I'm the Supreme Court. This is not admissible; therefore, they don't get it. And if they do find out about it somehow, then I'll just say 'well, it was never admissible anyway.'" How can you – how can you make that judgment?

The judge ultimately granted Harris' motion to withdraw his guilty plea, and the State appealed.

The Court of Appeals affirmed the trial court, basing its decision in part on case law[4] that says a defendant must be allowed to withdraw his/her plea if the court finds that there is a reasonable probability that the defendant would not have entered the plea if the evidence had been disclosed.

[4] State v. Sturgeon, 231 Wis. 2d 487, 605 N.W.2d 589 (Ct. App. 1999)

The State now has appealed to the Supreme Court, arguing that the evidence of B.M.M.'s accusation of her grandfather was not material to the defendant's case under standards set out in case law.[5] The State further argues that the case law on which the Court of Appeals relied (Sturgeon) was overruled by the U.S. Supreme Court in 2002[6]. Harris, on the other hand, argues that the lower courts got it right, and that Ruiz, the U.S. Supreme Court case, was fundamentally different from Sturgeon and therefore did not overrule it.

The Supreme Court will determine whether the State violated Harris' rights when it opted not to disclose this information.

[5] State v. Pulizzano, 155 Wis. 2d 633, 456 N.W.2d 325 (1990)
[6] United States v. Ruiz, 536 U.S. 622 (2002)

WISCONSIN SUPREME COURT
WEDNESDAY, FEBRUARY 11, 2004
10:45 a.m.

02-2897-CR & 02-2898-CR State v. Robert C. Deilke

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed an order of the Eau Claire County Circuit Court, Judge Eric J. Wahl presiding.

In this case, the Wisconsin Supreme Court will decide whether the State, in entering into a plea agreement with a defendant, must make it clear that the conviction may result in enhanced penalties for crimes committed in the future.

Here is the background: In 1993, Robert C. Deilke was convicted of operating a motor vehicle while intoxicated (OWI) as a second offense. In exchange for Deilke's plea, the State agreed to drop other charges. He continued to drink and drive. In 2000, he entered into another plea agreement on a fourth-offense OWI, and in 2001, he was again arrested and charged with a fifth OWI offense. That case is the one that has given rise to this appeal.

The 2001 conviction normally would have carried an enhanced penalty because of Deilke's status as a five-time repeat drunk driver. However, he successfully argued that his right to counsel was violated when he was convicted in 1993 and 2000, and so, although he was convicted and served sentences for those convictions, the circuit court would not allow the State to count these convictions to increase the penalty in the 2001 case.

The State responded by seeking to undo the 1993 and 2000 plea agreements and reinstate the charges that had been dropped as part of those agreements. The argument for this was that Deilke had violated the plea deal by agreeing to it and then attacking it. The circuit court agreed that Deilke's attack on the plea agreements had breached those agreements, and ruled that the State could reinstate the dropped charges. Deilke pleaded guilty but was not given any additional sentence.

The Court of Appeals reversed the circuit court, concluding that the State had received the full benefit of the 1993 and 2000 plea agreements: Prosecutors had obtained the convictions that they sought without the time and expense of conducting trials, and Deilke had been punished and had served his sentences. The Court of Appeals rejected the State's argument that Deilke had breached the agreements, noting that the State had never spelled out to Deilke that one of the benefits it expected to gain was the ability to hold the convictions against him in the future:

> The state concedes it never informed Deilke it was seeking the specific benefit of using his convictions for later penalty enhancement. Thus, Deilke cannot be deemed to know that, in exchange for potentially lesser penalties, he was providing the later use of his convictions for enhancement purposes.

In the Supreme Court, the State argues that convictions always carry the potential to enhance penalties for future crimes, whether or not the prosecutor spells that out to the defendant. The State also points out that potential future penalties are not on the bargaining table in the sense that prosecutors do not have the power to bargain away an enhancer for a crime that has not yet been committed.

The Supreme Court will decide whether the State must explicitly tell a defendant that it will use a conviction obtained through a plea agreement to enhance penalties for future crimes.

WISCONSIN SUPREME COURT

WEDNESDAY, FEBRUARY 11, 2004
1:30 p.m.

02-1203-CR State v. Derryle S. McDowell

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a judgment of the Milwaukee County Circuit Court, Judge Dennis P. Moroney presiding.

In this case, the Wisconsin Supreme Court will decide whether (and when) an attorney may require a client to testify in an unaided narrative, (rather than the usual question-and-answer style) to avoid taking part in the client's anticipated perjury.

Here is the background: On the night of April 21, 1997, an 18-year-old woman who was on her way home was followed by two men after she got off a bus. They forced her off the street, robbed her, sexually assaulted her at gunpoint, and then ordered her to lie on the ground and count to 50 as they ran away. She was unable to identify her assailants, but DNA evidence linked the crime to Derryle S. McDowell and an accomplice who pleaded guilty prior to trial.

McDowell was charged with robbery, kidnapping, and five counts of first-degree sexual assault while using a dangerous weapon. After the State wrapped up its case, Assistant State Public Defender Ronald Langford informed the judge that he had some concerns that would affect his ability to continue on the case. While not specific, he implied that he thought McDowell planned to testify untruthfully. After discussions with the judge about possibly switching from question-and-answer to unaided narrative, Langford consulted with McDowell and decided to put him on the stand and engage him in the typical question-and-answer session. The judge warned Langford not to switch over to a narrative format without first advising the court.

McDowell took the stand and Langford asked him a few questions about his age and address. Then Langford switched to a narrative format, telling McDowell to look at the jury and tell his story. This surprised both McDowell and the judge. Langford later said he made the switch suddenly because a colleague from the State Public Defender's Office had handed him a note recommending it.

McDowell told the jury his DNA was found in the area of the assault and on the victim because he coincidentally had had sex with his girlfriend in that same backyard. The jury convicted him on all five counts. He was ordered to serve five consecutive 40-year prison sentences.

McDowell filed a post-conviction motion arguing that he should be given a new trial because Langford did not represent him adequately. Specifically, McDowell said switching mid-stream from question-and-answer to narrative testimony threw him off:

> [Langford] got me thinking differently. From one moment he was going to be asking me questions. At one moment he want me to just tell a story. Had me going back and forth. I don't know which one was what.

The trial court denied McDowell's motion, finding that Langford had made the best of a difficult situation. Mc Dowell appealed, and the Court of Appeals found that Langford's performance *had* been deficient, but it did not affect the outcome because the conviction was sealed by the State's strong evidence and McDowell's "preposterous" story.

The Court of Appeals noted that case law[7] sets out principles for attorneys to follow when faced with clients who may be intending to tell lies on the witness stand, but there is no clear direction on what the attorney may use as a basis for concluding that his/her client plans to lie (must the client have told the attorney that s/he intends to testify falsely?) and what an attorney who reaches this conclusion while the client is on the witness stand must do. The Supreme Court will address these issues.

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[7] Nix v. Whiteside, 475 U.S. 157 (1986)

WISCONSIN SUPREME COURT
THURSDAY, FEBRUARY 12, 2004
9:45 a.m.

02-1249 St. Paul Fire & Marine Ins. v. Curtis J. Keltgen, et al.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a judgment of the Eau Claire County Circuit Court, Judge Thomas H. Barland presiding.

In this case, the Wisconsin Supreme Court will decide whether a person who has been assaulted on the job and who has received worker's compensation benefits also may collect for pain and suffering under the Patient's Rights Law[8].

Here is the background: Curtis J. Keltgen is a developmentally disabled adult who was placed in a job at the L.E. Phillips Career Development Center (CDC). He has mental retardation and autism. Over the course of a year, another sheltered employee who had a lengthy history of sexual misconduct repeatedly sexually assaulted Keltgen in the CDC men's bathroom. The CDC was aware of the attacker's history and had adopted special restrictions for him, but these were not enforced.

Keltgen lost substantial weight and became withdrawn and aggressive toward his mother. In spite of his difficulties communicating, Keltgen conveyed to his mother that something was happening to him in the restroom; however, when she questioned his caseworker, the worker assured her that nothing was amiss. Eventually the assaults were discovered after Keltgen's mother found a torn pair of his underwear and questioned him about it.

Keltgen filed for worker's compensation and sued the CDC and its insurer, St. Paul Fire & Marine Insurance Company, for violations of the Patient's Rights Law, which guarantees patients the right to be treated with respect and dignity by all employees of a treatment facility, the right to privacy in toileting, and more. Keltgen was approved for worker's compensation benefits; however, because these benefits are tied to loss of earnings and loss of earning capacity, and Keltgen earned $20.70 per week, he was entitled to just $317 in compensation. He also collected compensation for his past and future treatment costs, for a total of about $10,000.

Keltgen was not permitted to recover under the Patient's Rights Law, which allows recovery of any damages that the victim can prove came as a result of a violation of the statute. The circuit court ruled that Keltgen could only be compensated once for his pain and suffering, and that he did not have adequate evidence that the CDC violated the Patient's Rights Law.

Keltgen appealed this ruling, and the Court of Appeals affirmed the trial court. The Court of Appeals specifically rejected Keltgen's claim that his right to privacy in toileting had been violated, finding that the assaults occurred not because the CDC failed to protect his privacy, but because the employer failed to protect his safety.

On appeal to the Supreme Court, Keltgen maintains that the rule against double recovery exists to prevent people from collecting more than they are due. But since the money he received from worker's compensation was not adequate to compensate him fully, he argues, he should be able to pursue the other claim. He also takes issue with the Court of Appeals' finding that his privacy was not violated by the assaults. The Supreme Court will determine whether Keltgen should be allowed to proceed with a lawsuit under the Patient's Rights Law.

WISCONSIN SUPREME COURT
THURSDAY, FEBRUARY 12, 2004
10:45 a.m.

[8] Wis. Stats. § 51.61

02-3293 GPS, Inc. v. Town of St. Germain

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed an order of the Vilas County Circuit Court, Judge James B. Mohr presiding.

In this case, the Wisconsin Supreme Court will determine whether there is public access under the Open Records Law to records drafted by an attorney for a zoning appeals board.

The state laws that address access to government records and meetings favor openness; however, the courts over the years have recognized a few circumstances under which the public's right to know is outweighed by the privacy interests of the individuals involved. In 1996, the Wisconsin Supreme Court held that a document prepared by an attorney for a client could be kept closed because of the attorney-client privilege[9]. The question in this current case is whether this privilege always trumps the Open Records Law.

Here is the background: On Nov. 1, 1999, GPS, Inc. applied for a zoning permit to build a single-family home in the Town of St. Germain. The application was denied because the proposed home would have violated a town ordinance that required all buildings to be at least 75 feet back from the center of the road. GPS then requested a variance to build the house 50 feet from the center.

Between the time of GPS' filing for the variance and the time of the board's vote, the board chair corresponded about the matter with William O'Connor, the Town's attorney. The correspondence included an outline by O'Connor of the procedure that the zoning board should follow and a recommendation that the board deny the variance request.

At the Jan. 10, 2000, meeting, the board members spent about 10 minutes silently reviewing packets prepared by O'Connor and then, without discussion, unanimously denied the GPS request.

Following the meeting, GPS requested copies of the communications with O'Connor that related to the GPS variance application. The Town provided some of the records, but withheld three documents claiming that they were exempt from disclosure under the attorney-client privilege.

GPS asked the circuit court to order the file opened. The judge so ordered, writing:

> [W]e cannot allow an appeal board to avoid public scrutiny of its deliberations and its reasoning by placing them in written communications with their attorney under the guise of attorney-client privilege.

The Town appealed, and the Court of Appeals reversed, finding that the zoning board had a right to expect that its communications with its attorney were confidential. Judge Gregory Peterson noted:

> Contrary to GPS's arguments, Wisconsin Newspress … recognized that attorney-client privileged communications are among the "exceptions to disclosure created under the common law or by statute" and that those exceptions apply under the open records law. Therefore, a client, whether a public body or a private entity, has the right to expect that communications made in confidence to its attorney will not be disclosed.

The Supreme Court will decide if the zoning board's communications with its attorney are a matter of public record.

WISCONSIN SUPREME COURT

[9] Wisconsin Newspress, Inc. v. School District of Sheboygan Falls, 199 Wis. 2d 768, 546 N.W.2d 143 (1996). Newspress, unlike the current case, involved records of an attorney's investigation and recommendations in an employee disciplinary matter.

THURSDAY, FEBRUARY 12, 2004

1:30 p.m.

02-3353-FT State Farm Mutual Auto. Ins. Co. v. Nancy G. Langridge

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a judgment of the Racine County Circuit Court, Judge Charles H. Constantine presiding.

In this case, the Wisconsin Supreme Court will decide whether a woman whose husband was killed in a motorcycle accident may collect under her insurance policy's underinsured motorist (UIM) benefit. The circuit court said no, because she was not injured; the Court of Appeals agreed.

Automobile insurance policies cover the policyholder for damage caused by a driver who is underinsured or uninsured. The courts are frequently called upon to interpret coverage under the UIM benefit.

Here is the background: On June 19, 2000, Nancy Langridge's husband, William, was riding his motorcycle on Highway 36 in Burlington. A Ford Explorer driven by Michael Anhock, who was drunk, crossed the centerline and hit the motorcycle. Langridge was taken to Burlington Memorial Hospital and then transferred to Froedert Memorial Hospital, where he died of injuries caused by blunt trauma. His estate filed a claim with Anhock's insurer, Liberty Mutual, to recover for the pain and suffering William had experienced prior to his death. Liberty Mutual paid the policy limit of $150,000 in exchange for a full release from liability.

Nancy Langridge then filed her own claim, which was later assigned a value of $850,000, against State Farm seeking UIM benefits. State Farm denied the claim, noting that Nancy was not injured in the accident. The case went to the circuit court, which concluded that Nancy would have had to suffer physical injuries in order to recover damages under State Farm's UIM benefit.

Nancy appealed, arguing that the policy does not specify that the person making a claim must have suffered a bodily injury. The Court of Appeals, however, affirmed the circuit court, relying upon decisions in two past decisions involving similarly worded policies.[10]

On appeal to the Supreme Court, Nancy points out that, in 2002, the Wisconsin Court of Appeals panel that is headquartered in Wausau issued a ruling in a case involving policy language identical to the language in this case, and concluded that the uninjured policyholder was, in fact, covered.

The Supreme Court will resolve this seeming conflict within the Court of Appeals and determine if an insured person may collect under his/her UIM benefit for injuries suffered by another person.

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[10] Gocha v. Shimon, 215 Wis. 2d 586, 573 N.W.2d 218 (Ct. App. 1997) and Richie v. Am. Family Mut. Ins. Co., 140 Wis. 2d 51, 409 N.W.2d 146 (Ct. App. 1987)

WISCONSIN SUPREME COURT

THURSDAY, FEBRUARY 19, 2004

9:45 a.m.

03-0534 – 03-0553 Village of Trempealeau v. Mike R. Mikrut

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a ruling of the Trempealeau County Circuit Court, Judge John A. Damon presiding.

"This case is not just about the Village of Trempealeau and the Mikrut family. It is also about abuse of municipal power and the ability of courts to remedy that abuse." So argues Mike R. Mikrut, the petitioner in this case. The Supreme Court will decide whether Mikrut's failure to raise an issue in a timely manner should stop his fight against city hall.

Here is the background: Mikrut owned and operated a salvage yard in the Village of Trempealeau for about 50 years. He also owned property adjacent to the salvage operation, and used that property for storage of junked vehicles. Over time, the Village issued tickets to Mikrut for 21 ordinance violations: eight for operating a junkyard without a permit, and seven for storage of the junked cars. He was found guilty on all 21 violations and ordered to pay forfeitures of more than $104,000.

Mikrut appealed raising numerous issues, but did not challenge the circuit court's authority (also called competency or jurisdiction) to hear the case. The Court of Appeals affirmed the circuit court.

Mikrut then returned to the circuit court, arguing that the original ruling was invalid because the circuit court did not have competency to handle the case. His reasoning was that one of the Village ordinances was written in a manner that violated state law and also that the Village illegally wrote traffic citations for violations that do not fall under that ordinance. He again lost, with both the trial and appellate courts finding that he had missed his chance to raise this issue because he did not bring it up the first time around.

Mikrut now has come to the Supreme Court, which will determine if he will be allowed to continue fighting these tickets.

WISCONSIN SUPREME COURT

THURSDAY, FEBRUARY 19, 2004

10:45 a.m.

02-2322-FT State, et al. v. City of Rhinelander, et al.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a judgment of the Oneida County Circuit Court, Judge Robert A. Kennedy Sr. presiding.

This case involves a dispute about who should pay to clean up contaminated groundwater in the City of Rhinelander. The City maintains that the clean-up costs are covered under its insurance policies, but the insurance companies denied coverage.

The insurance companies won in both lower courts. In their rulings, the lower courts relied upon a 1994 Wisconsin Supreme Court case[11] in which the Supreme Court, on a 4-3 vote, found in favor of an insurance company in a very similar dispute involving the City of Edgerton. In 2003, however, another similar case came before the Supreme Court,[12] and the result was the opposite. Thus, while the Rhinelander case was moving its way through the court system, the 1994 case on which its rulings were based was overturned. The Court now will determine the effect of its 2003 decision on the City of Rhinelander's dispute with its insurers.

Here is the background: The City of Rhinelander owned and operated the Rhinelander Landfill from 1939 to 1980. During that time, some hazardous chemicals were dumped at the landfill and eventually leached into the soil, contaminating the groundwater. The Wisconsin Department of Natural Resources (DNR) sued the city and the corporations that dumped the chemicals to get the contamination cleaned up. Eventually, the DNR reached an agreement with the companies and the City of Rhinelander: the companies would pay two-thirds of the clean-up costs, Rhinelander would pay one-third, and the DNR would drop its request for $500,000 worth of forfeitures against the defendants.

Rhinelander turned to its insurers to cover its one-third share, but the insurance companies argued that the policies did not cover landfill remediation. As noted, the circuit court and Court of Appeals agreed that there was no coverage.

In the Supreme Court, Rhinelander labels this case "[A]nother in a long line of environmental cases in which insurers have been able to dodge the bullet of coverage in Wisconsin with highly technical and obscure language." Rhinelander argues that the new case law means there is insurance coverage for this clean up. The insurance companies, on the other hand, say the 2003 case raised different issues that have little bearing on this situation. The Supreme Court will decide whether the City of Rhinelander has insurance coverage for its landfill clean up.

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[11] City of Edgerton v. General Casualty Co. of Wisconsin, 184 Wis. 2d 750, 517 N.W. 2d 463 (1994).

[12] Johnson Controls v. Employers Insurance, 2003 WI 108

WISCONSIN SUPREME COURT

THURSDAY, FEBRUARY 19, 2004

1:30 p.m.

02-2035 Beloit Liquidating Trust v. Jeffrey T. Grade, et al.

This is a review of a split decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed an order of the Milwaukee County Circuit Court, Judge Timothy G. Dugan presiding.

This case involves two companies that were created under Delaware law but were based in Wisconsin for about 100 years before filing for bankruptcy. The Wisconsin Supreme Court will decide what, if anything, the officers and directors of these companies owe to their corporations' creditors.

Here is the background: Jeffrey T. Grade is one of a group of seven former officers and directors of Beloit Corporation and its former parent company, Harnischfeger Industries, Inc., which owned about 80 percent of Beloit Corporation. Beloit designed and manufactured paper-milling machines. In July 1999, Beloit and Harnischfeger filed for Chapter 11 bankruptcy protection. They developed a plan for reorganization that involved dissolving Beloit and transferring its assets and legal claims to a new entity, the Beloit Liquidating Trust.

In 2001, the Trust sued Grade and Beloit's other former officers and directors, alleging that these men had caused Beloit's downfall by mismanaging the business. The creditors focused on decisions by the officers and directors to supply a company in Indonesia and to build and operate a paper mill in Massachusetts – both of which, according to the creditors, ran up substantial losses that the managers attempted to hide. The circuit court dismissed the lawsuit, finding that the two-year statute of limitations had run out.

The Trust appealed, and the Court of Appeals reversed the circuit court, finding that the Chapter 11 filing had extended the deadline for lawsuits seeking to benefit the bankruptcy estate. The majority of the Court of Appeals also held that, under Delaware law, officers and directors of a corporation have a fiduciary duty (that is, they have a duty based upon the trust and confidence of their business associates) to the corporation's creditors when the corporation is insolvent but still is a "going concern" (it's still in business). In his dissent, Judge Ted Wedemeyer argued that the company is subject to Wisconsin law because it was doing business in this state. Under Wisconsin law, he argued, a company's officers and directors have a fiduciary duty to the company's creditors only when the corporation is both insolvent *and* out of business.

The officers and directors now have brought their case to the Supreme Court, which will clarify whether Delaware or Wisconsin law applies, and whether a corporation's officers and directors who make decisions that result in losses may be held legally responsible to the corporation's creditors.